

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

<b>STATE OF OKLAHOMA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Case No. 4:05-CV-329-GKF-PJC</b>
	)	
<b>TYSON FOODS, INC., et al.</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM IN SUPPORT OF JOINT MOTION  
TO ENTER CONSENT DECREE**

Plaintiff, the State of Oklahoma (the “State” or “Plaintiff”) and Defendant Willow Brook Foods, Inc. (“Willow Brook” or “Defendant”), offer the following memorandum in support of their joint motion to the Court to enter the Consent Decree.

**I. OVERVIEW**

On May 8, 2009, Plaintiff entered into a Consent Decree (the “Consent Decree”) with Defendant Willow Brook to be submitted to this Court.

Plaintiff and Willow Brook seek to have this Court approve and enter the Consent Decree. This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to Sections 107(a) and 113(f)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f)(1), and 28 U.S.C. § 1331, in that Plaintiff seeks recovery under federal law which grants exclusive jurisdiction over CERCLA to the United States District Courts. The Court is also empowered to approve settlements of claims brought pursuant to Sections 107(a) and 113(f)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f)(1). This Court has supplemental jurisdiction over its claims under state and common law.

## **II. DISCUSSION**

Willow Brook is a Missouri corporation based in Springfield, Missouri, and prior to March 28, 2008, was engaged in growing, processing and marketing turkeys and turkey products. Prior to March 28, 2008, Willow Brook maintained turkey growing farms or contracted with farmers ("Growers") who raised and cared for turkeys provided by Willow Brook. Some of the Growers Willow Brook contracted with were located within an area in eastern Oklahoma and northwest Arkansas known as the Illinois River Watershed ("IRW").

Plaintiff has filed claims under federal and state law and common law against Willow Brook and twelve other entities ("Defendants"), alleging generally that Defendants are responsible for poultry waste generated at company owned and contract Growers' poultry operations, and therefore are liable for the pollution of waters in the IRW allegedly resulting from land application of poultry waste within the IRW ("the Litigation").

Specifically, Plaintiff seeks recovery of response costs, natural resource damages and other relief from Defendants pursuant to CERCLA, 42 U.S.C. §§ 9607 and 9613, and additional relief pursuant to causes of action alleged under RCRA, state statutes and common law theories.

While it does not admit liability for any of Plaintiff's claims, Willow Brook desires to settle Plaintiff's claims and avoid the risks and costs of protracted litigation in this case, pursuant to the terms of the Consent Decree reached with Plaintiff.

**III.THE CONSENT DECREE BETWEEN PLAINTIFF AND WILLOW  
BROOK SHOULD BE APPROVED AND ENTERED.**

The Court should approve the Consent Decree between Plaintiff and Willow Brook. This Consent Decree is attached hereto for review by the Court. The Consent Decree represents a fair settlement entered into after arms-length negotiations and is the result of compromises of disputed claims and evaluations of the risks of protracted litigation between Plaintiff and Willow Brook. Plaintiff and Willow Brook have discussed and negotiated the extent of the claims of Plaintiff against Willow Brook for past and future environmental response costs in the IRW, including investigatory, response action and natural resource damage claims, and have agreed upon the settlement terms identified in the Consent Decree. The settlement terms are reasonable, adequate and consistent with the purposes of CERCLA. The Consent Decree is not collusive, and there are no agreements between Plaintiff and Willow Brook regarding this matter other than as stated in the Consent Decree.

Moreover, the settlement will assist in streamlining this litigation by removing the possibility of future litigation involving Willow Brook. Under the terms of the Consent Decree, Plaintiff is releasing Willow Brook from claims pertaining to the release of nutrients and bacteria from the management, storage, land application, and disposal of poultry waste generated at its poultry operations or poultry operations under contract with it in any watershed located in whole or in part in Oklahoma that occurred after December 31, 1998 and prior to the effective date of this Consent Decree. As a result of the settlement, under CERCLA and Oklahoma law, Willow Brook is entitled to protection from any further liability to any non-settlers who may have claims for contribution or cost recovery.

Federal courts are often called on to approve CERCLA settlements such as these and to enter orders granting contribution protection. Contribution protection is expressly provided under CERCLA § 113(f)(2): “A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement.” 42 U.S.C. § 9613(f)(2). Thus, federal courts routinely enter orders adopting settlement agreements for the purpose of resolving a settling party’s liability under CERCLA and effectuating contribution protection under CERCLA.

Similarly, for Plaintiff’s non-CERCLA claims under which it seeks damages, Oklahoma’s Contribution Among Tortfeasors Act, 12 O.S. § 832, also provides contribution protection to Willow Brook: “When a release, covenant not to sue, or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury... [i]t discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.” 12 O.S. § 832(H)(2). This statute applies where, as in this case, a common liability is alleged among multiple tortfeasors.

Moreover, there will be no question as to the effect of this settlement on the potential liability of non-settlors at this time. Both CERCLA and the Oklahoma Contribution Among Tortfeasors Act provide that the potential liability of any non-settlors is reduced by the amount of the settlement. 42 U.S.C. § 9613(f)(2)(“[S]ettlement does not discharge any of the other potentially liable persons..., but it reduces the potential liability of the others by the amount of the settlement”); 12 O.S. § 832(H)(1) (settlement with one among multiple tortfeasors “reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the

consideration paid for it, whichever is greater”). Accordingly, entry of the Consent Decree should not give rise to future litigation as to the effect of this settlement on the future contribution rights of non-settlers.

Therefore, Plaintiff and Willow Brook respectfully request that the Court enter an order approving and entering the Consent Decree.

Respectfully submitted,

\s\ Frank M. Evans w/permission by  
Daniel Lennington

FRANK M. EVANS, III  
(Admitted *pro hac vice*)  
Missouri Bar No. 23976  
Lathrop & Gage LLP  
1845 South National  
P. O. Box 4288  
Springfield, Missouri 65808  
(417) 886-2000 Telephone  
(417) 886-9126 Facsimile  
and

R. Thomas Lay, OBA #5297  
Kerr, Irvine, Rhodes & Ables  
201 Robert S. Kerr Ave., Suite 600  
Oklahoma City, OK 73102  
(405) 272-9221 Telephone  
(405) 236-3121 Facsimile

**ATTORNEYS FOR DEFENDANT  
WILLOW BROOK FOODS, INC.**

\s\ Daniel P. Lennington  
W.A. Drew Edmondson, OBA #2628  
ATTORNEY GENERAL  
Kelly Hunter Burch OBA #17067  
J. Trevor Hammons OBA #20234  
Daniel P. Lennington OBA #21577  
*Assistant Attorneys General*  
State of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105

(405) 521-3921

M. David Riggs, OBA #7583  
Joseph P. Lennart OBA #5371  
Richard T. Garren, OBA #3253  
Sharon K. Weaver, OBA #19010  
Robert A. Nance OBA #6581  
D. Sharon Gentry OBA #15641  
David P. Page OBA #6852  
Riggs Abney Neal Turpen Orbison &  
Lewis  
502 W. Sixth Street  
Tulsa, OK 74119  
(918) 587-3161

Louis W. Bullock, OBA #1305  
Robert M. Blakemore OBA #18656  
Bullock, Bullock & Blakemore  
110 W. 7th Street, Suite 707  
Tulsa, OK 74119  
(918) 584-2001

Frederick C. Baker  
(admitted *pro hac vice*)  
Lee M. Heath  
(admitted *pro hac vice*)  
Elizabeth C. Ward  
(admitted *pro hac vice*)  
Elizabeth Claire Xidis  
(admitted *pro hac vice*)  
Motley Rice, LLC  
28 Bridgeside Blvd.  
Mount Pleasant, SC 29465  
(843) 216-9280

William H. Narwold  
(admitted *pro hac vice*)  
Ingrid L. Moll  
(admitted *pro hac vice*)  
Motley Rice LLC  
20 Church St., 17<sup>th</sup> Floor  
Hartford, CT 06103  
(860) 882-1676

Jonathan D. Orent  
(admitted *pro hac vice*)

Michael G. Rousseau  
(admitted *pro hac vice*)  
Fidelma L. Fitzpatrick  
(admitted *pro hac vice*)  
Motley Rice, LLC  
321 South Main Street  
Providence, RI 02940  
(401) 457-7700

**ATTORNEYS FOR PLAINTIFF  
STATE OF OKLAHOMA**

**CERTIFICATE OF SERVICE**

I certify that on the 12th day of May, 2009, I electronically transmitted the attached document to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Daniel Lennington, Assistant Attorney General	daniel.lennington@oak.ok.gov

Melvin David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert Allen Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	

Louis W. Bullock	lbullock@bullock-blakemore.com
Robert M. Blakemore	bblakemore@bullock-blakemore.com
Bullock Bullock & Blakemore	

Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Michael G. Rousseau	mrousseau@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
Motley Rice LLC	

**COUNSEL FOR STATE OF OKLAHOMA**

Robert P. Redemann rredemann@pmrlaw.net  
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

David C. Senger david@cgmLaw.com

Robert E. Sanders rsanders@youngwilliams.com  
E. Stephen Williams steve.williams@youngwilliams.com  
Young Williams P.A.

**COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.**

John H. Tucker jtuckercourts@rhodesokla.com  
Colin H. Tucker chtucker@rhodesokla.com  
Theresa Noble Hill thillcourts@rhodesokla.com  
Kerry R. Lewis klewis@rhodesokla.com  
Rhodes, Hieronymus, Jones, Tucker & Gable

Terry W. West terry@thewesetlawfirm.com  
The West Law Firm

Delmar R. Ehrich dehrich@faegre.com  
Bruce Jones bjones@faegre.com  
Krisann Kleibacker Lee kkleee@baegre.com  
Todd P. Walker twalker@faegre.com  
Christopher H. Dolan cdolan@faegre.com  
Melissa C. Collins mcollins@faegre.com  
Faegre & Benson LLP

Dara D. Mann dmann@mckennalong.com  
McKenna, Long & Aldridge LLP

**COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC**

George W. Owens gwo@owenslawfirm.com  
Randall E. Rose rer@owenslawfirm.com  
The Owens Law Firm, P.C.

James M. Graves jgraves@bassettlawfirm.com  
Gary V. Weeks gweeks@bassettlawfirm.com  
Woody Bassett wbassett@bassettlawfirm.com  
K.C. Dupps Tucker kctucker@bassettlawfirm.com  
Earl Lee "Buddy" Chadick bchadick@bassettlawfirm.com  
Bassett Law Firm

**COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.**

A. Scott McDaniel smcdaniel@mhla-law.com  
Nicole Longwell nlongwell@mhla-law.com  
Philip Hixon phixon@mhla-law.com  
Craig A. Merkes cmerkes@mhla-law.com  
McDaniel, Hixon, Longwell & Acord, PLLC



Sherry P. Bartley  
Mitchell, Williams, Selig, Gates & Woodyard, PLLC

sbartley@mws gw.com

**COUNSEL FOR PETERSON FARMS, INC.**

John R. Elrod  
Vicki Bronson  
P. Joshua Wisley  
Bruce W. Freeman  
D. Richard Funk  
Conner & Winters, LLP

jelrod@cwlaw.com  
vbronson@cwlaw.com  
jwisley@cwlaw.com  
bfreeman@cwlaw.com  
rfunk@cwlaw.com

**COUNSEL FOR SIMMONS FOODS, INC.**

Stephen L. Jantzen  
Patrick M. Ryan  
Paula M. Buchwald  
Ryan, Whaley, Coldiron & Shandy, P.C.

sjantzen@ryanwhaley.com  
pryan@ryanwhaley.com  
pbuchwald@ryanwhaley.com

Mark D. Hopson  
Jay Thomas Jorgensen  
Timothy K. Webster  
Thomas C. Green  
Gordon D. Todd  
Sidley Austin Brown & Wood LLP

mhopson@sidley.com  
jjorgensen@sidley.com  
twebster@sidley.com  
tcgreen@sidley.com  
gtodd@sidley.com

Robert W. George  
L. Bryan Burns  
Tyson Foods, Inc.

robert.george@tyson.com  
bryan.burns@tyson.com

Michael R. Bond  
Erin Walker Thompson  
Dustin R. Darst  
Kutak Rock LLP

michael.bond@kutakrock.com  
erin.thompson@kutakrock.com  
dustin.darst@kutakrock.com

**COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.**

R. Thomas Lay  
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin  
David Gregory Brown  
Lathrop & Gage LLP

jgriffin@lathropgage.com

**COUNSEL FOR WILLOW BROOK FOODS, INC.**

Robin S. Conrad  
National Chamber Litigation Center, Inc.

rconrad@uschamber.com

Gary S. Chilton  
Holladay, Chilton & Degiusti, PLLC

gchilton@hcdattorneys.com

**COUNSEL FOR U.S. CHAMBER OF COMMERCE AND AMERICAN TORT REFORM ASSOCIATION**

Michael D. Graves  
D. Kenyon Williams, Jr.  
Hall, Estill, Hardwick, Gable, Golden & Nelson

mgraves@hallestill.com  
kwilliams@hallestill.com

**COUNSEL FOR POULTRY GROWERS/INTERESTED PARTIES/POULTRY PARTNERS, INC.**

Richard C. Ford  
LeAnne Burnett  
Crowe & Dunlevy

fordr@crowedunlevy.com  
burnettl@crowedunlevy.com

**COUNSEL FOR OKLAHOMA FARM BUREAU, INC.**

Kendra Akin Jones, Asst. Attorney General  
Charles L. Moulton, Sr. Asst. Attorney General

kendra.jones@arkansasag.gov  
charles.moulton@arkansasag.gov

**COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION**

M. Richard Mullins  
McAfee & Taft

richard.mullins@mcafeetaft.com

**COUNSEL FOR TEXAS FARM BUREAU, TEXAS CATTLE FEEDERS ASSOCIATION, TEXAS PORK PRODUCERS ASSOCIATION AND TEXAS ASSOCIATION OF DAIRYMEN**

Mia Vahlberg  
Gable Gotwals

mvahlberg@gablelaw.com

James T. Banks  
Adam J. Siegel  
Hogan & Hartson, LLP

jtbanks@hhlaw.com  
ajsiegel@hhlaw.com

**COUNSEL FOR NATIONAL CHICKEN COUNCIL, U. S. POULTRY & EGG ASSOCIATION AND NATIONAL TURKEY FEDERATION**

John D. Russell  
Fellers, Snider, Blankenship, Bailey & Tippens, P.C.

Jrussell@fellerssnider.com

William A. Waddell, Jr.  
David E. Choate  
Friday, Eldredge & Clark, LLP

waddell@fec.net  
dchoate@fec.net

**COUNSEL FOR ARKANSAS FARM BUREAU FEDERATION**

Barry G. Reynolds

reynolds@titushillis.com

Jessica E. Rainey  
Titus Hills Reynolds Love Dickman & McCalmon

jrainey@titushillis.com

William S. Cox, III  
Nikaa B. Jordan  
Lightfoot, Franklin & White, LLC

wcox@lightfootlaw.com  
njordan@lightfootlaw.com

**COUNSEL FOR AMERICAN FARM BUREAU AND NATIONAL CATTLEMEN'S  
BEEF ASSOCIATION**

Duane L. Berlin  
Lev & Berlin PC

dberlin@levberlin.com

**COUNSEL FOR COUNCIL OF AMERICAN SURVEY RESEARCH ORGANIZATIONS  
AND AMERICAN ASSOCIATION FOR PUBLIC OPINION RESEARCH**

I also certify that I served the above and foregoing pleading by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System on May 12, 2009:

J. D. Strong  
Secretary of the Environment  
State of Oklahoma  
3800 North Classen  
Oklahoma City, OK 73118

Thomas C. Green  
Sidley Austin Brown & Wood LLP  
1501 K Street NW  
Washington, DC 20005

Dustin McDaniel  
Justin Allen  
Office of the Attorney General of Arkansas  
323 Center Street, Suite 200  
Little Rock, AR 72201-2610

Steven B. Randall  
58185 County Road 658  
Kansas, OK 74347

Cary Silverman  
Victor E. Schwartz  
Shook Hardy & Bacon LLP  
600 14th Street NW, Suite 800  
Washington, DC 20005-2004

George R. Stubblefield  
HC 66, Box 19-12  
Proctor, OK 74457

\s\ Daniel P. Lennington